

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

GUILLERMO & LEEANN GARCIA,

Plaintiff,

v.

WELLS FARGO BANK, NA, ALSO  
KNOWN AS WACHOVIA MORTGAGE A  
DIVISION OF WELLS FARGO BANK  
NA, FORMERLY KNOWN AS WACHOVIA  
MORTGAGE, FSB, FORMERLY KNOWN  
AS WORLD SAVINGS BANK, FSB,

Defendant.

NO. CV-11-5111-EFS

**ORDER REMANDING LAWSUIT TO  
WALLA WALLA COUNTY SUPERIOR  
COURT AND CLOSING FILE**

On October 6, 2011, a telephonic hearing occurred in the above-captioned matter.<sup>1</sup> Plaintiff Guillermo Garcia participated.<sup>2</sup> Nicolas Vikstrom and Robert Bocko appeared on Defendant Wells Fargo Bank's ("Wells Fargo") behalf. After hearing from Mr. Garcia and counsel, reviewing the submitted material, and considering the relevant authority, the Court is fully informed. For the reasons given below, the Court remands this lawsuit to Walla Walla County Superior Court.

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<sup>1</sup> This hearing also involved a related case, CV-10-5146-EFS; a separate Order will be entered in that case.

<sup>2</sup> Mr. Garcia advised that his wife LeeAnn Garcia was unable to participate because she was teaching.

1 On July 29, 2011, Wells Fargo removed the lawsuit filed by the  
2 Garcias in Walla Walla Superior Court on July 8, 2011. Wells Fargo  
3 removed the lawsuit even though it had not yet been served with a copy  
4 of the complaint, summons, or other document. Rather, Wells Fargo  
5 received notice of the lawsuit because Plaintiffs mailed a copy of the  
6 state-court complaint to Wells Fargo's counsel. Counsel, however, is not  
7 Wells Fargo's registered agent for service. Accordingly, under the  
8 circumstances, the Court finds Wells Fargo's removal was premature. 28  
9 U.S.C. § 1446 ("receipt by the defendant"). The Garcias also oppose  
10 removal as recognized in their Motion to Deny Defendant's Notice of  
11 Removal, which was mistakenly filed in a related lawsuit, CV-10-5146-EFS,  
12 ECF No. [58](#). The Court recognizes that, after the state-court lawsuit was  
13 removed, Plaintiffs filed in Walla Walla Superior Court a notice  
14 indicating their desire to dismiss the state lawsuit. Given the unusual  
15 procedural posture, the Court determines the proper procedure is to  
16 remand this lawsuit to Walla Walla Superior Court and allow that court  
17 to take action consistent with Plaintiffs' earlier-filed dismissal  
18 notice.

19 Accordingly, **IT IS HEREBY ORDERED:**

20 1. This lawsuit is **REMANDED** to Walla Walla Superior Court, Case  
21 No. 11-2-00576-4, without fees and costs to either party.

22 2. All pending motions, hearings, and deadlines are **STRICKEN**.

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1        3.    This file shall be **CLOSED**.

2        **IT IS SO ORDERED.**    The District Court Executive is directed to enter  
3 this Order and provide copies to Plaintiffs, counsel, and the Walla Walla  
4 Superior Court.

5                **DATED** this    7<sup>th</sup>       day of October 2011.

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7                                S/ Edward F. Shea  
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   EDWARD F. SHEA  
   United States District Judge

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